



IDEM
Office of Air Management
Rules Guidance

March 3, 1999

**Development of New Rules Concerning Public Records; Confidential Information;
Confidentiality Agreements
97-19 (APCB)**

FACT SHEET

Overview

The Air Pollution Control Board's (APCB) public records rule is contained in 326 IAC 17. 326 IAC 17 implements the requirements of IC 5-14-3, Access to Public Records and makes provisions for access to public records, and the protection of legitimate interests in the confidentiality of certain information. Additionally, 326 IAC 17 addresses confidentiality agreements required by IC 13-14-11-5 pertaining to employees of, or from persons under contract to, the board or department, and the employees of other state agencies

Each of the IDEM program areas with confidentiality rules will be repealing those rules and replacing them with new public records rules. The purposes of repealing 326 IAC 17-1 and adding new rule 326 IAC 17.1 are: to incorporate statutory changes to IC 5-14-3 that have been made since this rule was last amended; to be consistent in the treatment of confidential materials among IDEM program areas; and, to allow IDEM to simplify and streamline the procedures associated with the submission and handling of confidential information.

Citations Affected

This rulemaking adds 326 IAC 17.1 Public Records; Confidential Information; Confidentiality Agreements; 326 IAC 1-2-6.5 "Board" defined; and 326 IAC 1-2-20.5 "Commissioner" defined; and repeals 326 IAC 17-1 Public Records.

Affected Persons

All persons seeking access to public records or the protection of legitimate interests in the confidentiality of certain information.

Potential Cost

No new costs would be imposed on the public. This rulemaking incorporates statutory updates to IC 5-14-3, clarifies the process for claiming information as confidential, makes the determination process more streamlined, and makes information more readily available to the public.

Description

The Office of Air Management (OAM), the Office of Solid and Hazardous Waste Management (OSHW), and the Office of Water Management (OWM) each have public records rules that differ only in their location within the administrative code; 326 IAC 17-1, 329 IAC 6, and 327 IAC 12-1, respectively. Hazardous Waste rules differ somewhat, due to federal requirements.

The program areas within IDEM are working together to develop public records rules to present to the Air Pollution Control Board (APCB), Solid Waste Management Board (SWMB), and Water Pollution Control Board (WPCB). Draft rule language among the different program areas is consistent. Requirements differ somewhat where required by governing federal mandates such as the Clean Air Act or Clean Water Act. Separate

rulemakings are being conducted by the OAM, the OSHWM, and the OWM.

The proposed changes do not affect access to or limit the scope of public records available for inspection. A better defined process for those who request confidential treatment of information will expedite the determination process. Public records are available for inspection in the file rooms of each respective program area and many permits and related information are available on the agency web site at the following address: <http://www.state.in.us/idem/>.

The draft rule, 326 IAC 17.1, includes the following main changes:

- a statement of the procedures used for claiming information as confidential;
- the criteria used to determine that information is confidential;
- the process for making a determination on a claim of confidentiality;
- provisions for requesting additional information, if needed to make a determination on a claim of confidentiality;
- a provision for the modification of a determination on a claim of confidentiality; and,
- procedures associated with the approval and denial of a claim of confidentiality.

Better defining the process to claim information as confidential, along with the criteria for determining what type of information is exempt from disclosure will clarify the process for those who request confidential treatment of information. In addition, requests for confidential treatment must be accompanied by an explanation of how the information meets the criteria of confidentiality. This will expedite the determination process.

The draft rule revises definitions to more closely reflect public record statutes, and provisions have been added for administrative appeal, judicial review, authorized disclosure penalties, and wrongful disclosure penalties.

Remaining proposed changes reflect changes in statutory requirements, enhance the clarity of the rule, or streamline the process for claiming information as confidential and making confidentiality determinations in an effort to provide more efficient and greater access to public records.

Consistency with Federal Requirements

The new rules are consistent with federal laws and rules.

CONSIDERATION OF FACTORS OUTLINED IN INDIANA CODE 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account:

- 1) all existing physical conditions and the character of the area affected;
- 2) past, present, and probably future uses of the area, including the character of the uses of surrounding areas
- 3) zoning classifications;
- 4) the nature of the existing air quality or existing water quality as the case may be;
- 5) technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality; and
- 6) economic reasonableness of measuring or reducing any particular type of pollution.

The board shall also take into account the right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

RECOMMENDATION

It is recommended that the board preliminarily adopt new rules, 326 IAC 17-1.1, 326 IAC 1-2-6.5, and 326 IAC 1-2-20.5 and repeal existing rule 326 IAC 17-1, as presented.

IDEM Contact

Additional information regarding this rulemaking action can be obtained by calling (800) 451-6027, press 0 and ask for Thomas A. Frankiewicz, Rules Development Section, Office of Air Management, (or extension 2-1553) or dial (317) 232-1553.